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Tax Legislation

Mark A. Stach

West Virginia University College of Law

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TAX LEGISLATION

I. BUSINESS TAXES

A. Background

West Virginia imposes three different taxes on state businesses: the corporate net income tax (CNIT),¹ the business and occupation tax (B&O),² and the carrier income tax.³ All West Virginia businesses pay the CNIT, and all businesses except carriers pay the B&O tax. Carriers substitute the carrier income tax for the B&O tax.

In April 1985, the West Virginia Legislature made significant changes in the way that the State will tax businesses in the future. Beginning on July 1, 1987, the B&O tax will be eliminated for all businesses except public utilities and generators of electric power. The B&O tax will be replaced by a severance tax on the producers of natural resources and a business franchise tax on all businesses. Also, the carrier income tax will be eliminated and replaced, for some carriers, by a telecommunications tax. Finally, a credit against taxes was made available to businesses that create new jobs in West Virginia.

The B&O tax is based on the gross proceeds of the business. Since the tax is based on gross (not net) revenue, businesses making little or no profit may be paying high taxes under the B&O tax system. This is especially harmful to new businesses, most of which do not realize a profit immediately. Taxing these businesses on the basis of gross proceeds, when many of them may already be losing money or making only a slight profit, discourages investment in the State. The Legislature, in response to public sentiment against the B&O tax, decided to eliminate the tax.

The business franchise tax, which will replace the B&O tax, is based on the capital⁴ of the corporation or partnership, not on gross proceeds. However, the severance tax on the producers of natural resources will be based on the gross proceeds. Additionally, the B&O tax will remain in effect for electric companies and public utilities. Since these businesses will continue to be taxed on the basis of gross proceeds, the elimination of the B&O tax will have little practical effect for them. Mineral producers and utilities supply over half of the State's business tax pro-

¹ W. VA. CODE §§ 11-24-1 to -40 (1983 & Supp. 1985).

² W. VA. CODE § 11-13-2 (Supp. 1985).

³ W. VA. CODE §§ 11-12A-1 to -23 (1983) (repealed effective July 1, 1987).

⁴ W. VA. CODE § 11-23-2A defines capital for a corporation as

The average of the beginning and ending year balances of the sum of the following entries from Schedule L of Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service for the taxable year:

- (i) The value of all common stock and preferred stock of the taxpayer;
- (ii) The amount of paid-in or capital surplus;
- (iii) Retained earnings, appropriated and unappropriated;
- (iv) Less the cost of Treasury stock.

W. VA. CODE § 11-23-2B defines capital for a partnership as "[t]he average of the beginning and ending year balances of the value of partner's capital accounts from Schedule L of federal Form 1065, as filed by the taxpayer with the Internal Revenue Service for the taxable year."

ceeds under the current system.⁵ The Legislature was unwilling to give up the tax revenue generated from these sources, so they will continue to pay on the basis of gross proceeds. The need to encourage investment in the State by mineral producers is not as great as for other businesses since they are forced by geological and economic realities to locate within the State.

For other businesses, the elimination of the B&O tax and its replacement with the business franchise tax represents a major change. Under the new system, West Virginia's tax structure will be more like those in surrounding states. The legislators changed the tax system to make West Virginia more competitive with surrounding states and more attractive to investors.

B. B&O Tax Elimination and Transition Period Changes

Senate Bill No. 705 eliminated the B&O tax for all business classifications with the exceptions of public utilities⁶ and businesses generating electric power beginning on July 1, 1987.⁷ For the transition period between the effective date of the bill and the elimination of the B&O tax for most businesses, Senate Bill No. 705 also reduced B&O tax rates, brought the gross receipts tax on wholesale sellers into line with constitutional requirements, and clarified a business tax classification.

The bill provided for a five percent reduction in the rate of the B&O tax for all classifications except manufacturing. For the period between July 1, 1985 and July 1, 1987, the rates for utilities and generators of electric power will be reduced along with the rates for other businesses. However, on July 1, 1987 the rates for these classifications will be restored and returned to the rate in effect on January 1, 1985, while the rates for all other classifications will expire.

Senate Bill No. 705 also changed the tax rate for businesses in the manufacturing classification.⁸ The rate on manufacturing was reduced by nine percent, from 88¢ for every \$100 of gross proceeds to 80¢ for every \$100 of gross proceeds. This tax will also expire on July 1, 1987.⁹

Senate Bill No. 705 also amended West Virginia Code section 11-13-2 to bring it into line with the decision of the United States Supreme Court in *Armco, Inc. v. Hardesty*.¹⁰ In *Armco*, the Court held that West Virginia's gross receipts tax unconstitutionally interfered with interstate commerce.¹¹ The State imposed a gross

⁵ Telephone conversation with Alan L. Mieke, Director, Research Division of the West Virginia State Tax Dept. (Sept. 20, 1984).

⁶ W. VA. CODE § 11-13-2d (Supp. 1985).

⁷ W. VA. CODE § 11-13-2m (Supp. 1985).

⁸ W. VA. CODE § 11-13-2b (Supp. 1985).

⁹ *Id.*

¹⁰ *Armco, Inc. v. Hardesty*, 104 S. Ct. 2620 (1984).

¹¹ *Id.* at 2622.

receipts tax on businesses selling tangible property at wholesale as a part of the overall B&O tax scheme.¹² In-state manufacturers were exempt from the tax, while out-of-state manufacturers had to pay the wholesale gross receipts tax.¹³ This resulted in a tax of 0.27 percent on the sale price of property manufactured out of state, but no tax on the sale price of property manufactured within the State.¹⁴ The Court held that this difference in tax burdens violated the Commerce Clause.¹⁵

Pursuant to the 1985 revision, West Virginia no longer exempts in-state manufacturers from the gross proceeds tax on manufactured products. The law was amended to add the following provision:

That on and after the effective date of this proviso [April 13, 1985], a person exercising any privilege taxable under section two-b (§ 11-13-2b) of this article, and engaging in the business of selling his manufactured products in this state shall be required to make returns of the gross proceeds of such wholesale sales and pay the tax imposed by this section at the rate set forth in section two-c of this article for the privilege of engaging in the business of selling such manufactured products in the state.¹⁶

This charge will be in effect until the elimination of the tax on gross receipts on July 1, 1987.¹⁷ In accordance with the mandate of the United States Supreme Court, the State's wholesale sales gross proceeds tax no longer interferes with interstate commerce.¹⁸

Senate Bill No. 705 also affected the tax classification for food processors. West Virginia Code section 11-13-2b was amended to say that the processing of food for human consumption was not a manufacturing privilege and the processors of food are required to report gross proceeds under either the retail or wholesale tax classification.¹⁹

While some sections of Senate Bill No. 705 went into effect immediately, the key provision, the elimination of the B&O tax, was delayed until July 1, 1987.²⁰ Businesses will file their 1986 tax returns using the B&O system and will file an informational return calculating what taxes would have been had the new system been in place. This will allow the State to determine what effect the change will have on revenues. If the new system had been in effect for fiscal year 1986, the

¹² W. VA. CODE § 11-13-2c (Supp. 1985).

¹³ W. VA. CODE § 11-13-2 (1983).

¹⁴ *Armco*, 104 S. Ct. at 2623.

¹⁵ *Id.* at 2622.

¹⁶ W. VA. CODE § 11-13-2(f) (Supp. 1985).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ W. VA. CODE § 11-13-2b(e) (Supp. 1985).

²⁰ W. VA. CODE § 11-13-2(b) (Supp. 1985).

estimate of revenues from business taxes would be \$576 million. The official estimate of revenues under the old system for fiscal year 1986 is \$607.5 million.²¹

C. *Replacements for B&O*

While Senate Bill No. 705 deals with the eventual elimination of the B&O tax, the Committee Substitute for House Bill No. 1693 introduces taxes that will be used to replace the B&O tax. The Committee established the severance tax and the business franchise tax.

1. Severance Tax

The Committee's action added Article 13A to Chapter 11 of the West Virginia Code. Article 13A establishes the severance tax which will be imposed on all producers of natural resources in the State, including those businesses that buy and process natural resources. The amount of the tax will be "determined by the application of rates against the gross value of the articles produced, as shown by the gross proceeds from the sale thereof by the producer."²² Like the B&O tax, the severance tax is based on gross revenues; so, for the producers of natural resources, the change in the law has little effect beyond a change in the rates.

Under Article 13A, the severance tax rates on July 1, 1987 will be the same as the B&O rates were on January 1, 1985. The rates for the various natural resources will either be raised or lowered annually until 1992, when the tax rate for all natural resources, except timber, will be four percent.²³

The continued taxing of natural resource producers on the basis of gross proceeds will lessen the effect that the elimination of the B&O tax will have on the State. West Virginia should continue to receive the same amount of tax revenue from these sources as it has in the past.

2. Business Franchise Tax

In addition to the severance tax, the Committee Substitute for House Bill No. 1693 created a business franchise tax which will be imposed on all partnerships

²¹ Letter from Alan L. Mierke, Director, Research Division of the West Virginia State Tax Dept. to Mark A. Stach (Oct. 2, 1985).

²² W. VA. CODE § 11-13A-3 (Supp. 1985).

²³ The rate for coal producers was 3.85% on July 1, 1985 and will be raised by .03% every year until 1992, when it will be 4%. W. VA. CODE § 11-13A-3(b)(1) (Supp. 1985). The rate for sandstone and limestone producers will rise .36% annually from 2.2% in 1987 to 4% in 1992. W. VA. CODE § 11-13A-3(b)(2) (Supp. 1985). The tax rate for oil producers and gravel and sand producers will drop

and corporations in the State.²⁴ The business franchise tax will provide an additional source of revenue for the State in replacing the B&O tax. Like the other measures enacted by the Committee Substitute, the franchise tax will go into effect on July 1, 1987.

The business franchise tax, unlike the B&O tax and the severance tax, is not based on gross proceeds.²⁵ Instead it is based on the capital (net equity) of the corporation or partnership. This method of taxation eliminates the problem of taxing businesses with high gross revenues who are making little or no profit and thus cannot afford to pay taxes based on gross proceeds. It is the assumption of the Legislature that taxing on the basis of net equity will make the State more attractive to businesses and investors. Taxes paid by new businesses would offset some of the revenue lost by taxing on the basis of net equity as opposed to gross proceeds. The State would also receive tax revenue from the individual income taxes paid by new employees. The hoped-for improvement in the State's business climate would lead to more tax revenue for the State; thus the change would be beneficial to both the State and the businesses within the State. The amount of the tax will be either fifty dollars or 5.5 percent of the value of the tax base, whichever is greater.²⁶

The business franchise tax will be imposed on every domestic corporation, every corporation having its commercial domicile in the State, and every foreign or domestic corporation or partnership leasing property located in the State or doing business within the State.²⁷ A corporate taxpayer which is also taxable in another state can apportion its tax base to West Virginia by multiplying the base by a fraction which is based on a number of economic factors. The numerator of the fraction is determined by adding a payroll factor, a property factor, and a double-weighted sales factor. The denominator of the fraction is four.

The business franchise tax represents a major change in the way that West Virginia taxes corporations and partnerships doing business in the State. For the first time, most of the businesses in the State will not be taxed on the basis of gross proceeds.

D. *Telecommunications Tax Replaces Carrier Income Tax*

The other major change that will be brought about by the Committee Substitute

from 4.34% in 1987 to 4% in 1992. W. VA. CODE §§ 11-13A-3(b)(3) and -3(b)(5) (Supp. 1985). The tax rate imposed on natural gas producers will experience the biggest drop—2.5%—from 6.5% in July, 1987 to 4% in 1992. W. VA. CODE § 11-13A-3(b)(4) (Supp. 1985). The rate for timber producers will be 2.5% on July 1, 1987 and will remain at that rate thereafter. W. VA. CODE § 11-13A-3(b)(6) (Supp. 1985).

²⁴ W. VA. CODE §§ 11-23-1 to -22 (Supp. 1985).

²⁵ W. VA. CODE § 11-23-4 (Supp. 1985).

²⁶ W. VA. CODE § 11-23-6(b) (Supp. 1985).

²⁷ W. VA. CODE § 11-23-6(a) (Supp. 1985).

for House Bill No. 1693 is the elimination of the carrier income tax and its replacement with the telecommunications tax. West Virginia currently employs a carrier income tax on businesses that transport people, goods, and information operating in the State.²⁸ These carriers are exempt from the B&O tax. The Committee Substitute for House Bill No. 1693 created the telecommunications tax, which will replace the carrier income tax on July 1, 1987.²⁹ The tax will be imposed on every telecommunications business selling or furnishing telephone, telegraph, or other telecommunications service within the State.³⁰

The telecommunications tax, like the B&O tax, is based on gross income. The telecommunications tax will eliminate gross income-based taxes for those carriers which are not in the telecommunications business. The reasons supporting the imposition of a gross proceeds tax on utilities and mineral producers apply to telecommunications businesses as well: revenues derived from the gross proceeds tax represent an important source of income for the State and the need to encourage investment by telecommunications businesses is not as great as it is for other types of businesses.

The actual tax is four percent of the sum of (1) the gross income from all telecommunications business beginning and ending in the State and (2) the gross income apportioned to the State from all telecommunications business that either begins or ends in the State.³¹ Additionally, telecommunications companies which are taxable in other states as well as West Virginia will have their taxes apportioned.³² The apportionment is done by comparing the length of the company's pathways, weighted by the number of channels such pathways are capable of carrying, in West Virginia, to the total length of weighted pathways in the United States.³³ The proportion of such pathways in West Virginia will determine the apportionment of the company's tax to the State.

D. *Jobs Expansion Tax Credit*

The Committee Substitute for Senate Bill No. 198 created the Business Investment and Jobs Expansion Tax Credit.³⁴ This provision, commonly referred to as the "super tax credit," allows any expanding businesses, which create at least fifty new jobs in the State, a credit against the various business taxes imposed by the State.

²⁸ W. VA. CODE § 11-12A-2 (1983) (repealed effective July 1, 1987) taxes the following carriers: motor vehicle carriers, railroad car carriers, express companies, pipeline companies, telephone and telegraph companies, airlines, and any person operating a steamboat or other watercraft for the transportation of freight or passengers.

²⁹ W. VA. CODE §§ 11-13B-1 to -17 (Supp. 1985).

³⁰ W. VA. CODE § 11-13B-3 (Supp. 1985).

³¹ W. VA. CODE § 11-13B-3(b)(A) (Supp. 1985).

³² W. VA. CODE § 11-13B-3(b)(B) (Supp. 1985).

³³ W. VA. CODE § 11-13B-3(d) (Supp. 1985).

³⁴ W. VA. CODE § 11-13C-1 (Supp. 1985).

The amount of credit allowed under the super tax credit is determined by multiplying the amount of the taxpayer's "qualified investment" in property purchased for business expansion, by the taxpayer's new jobs percentage.³⁵ In order to qualify for the credit, the property for the expansion must have been purchased on or after March 1, 1985.³⁶

The qualified investment is a percentage of the cost of each property bought for expansion.³⁷ The applicable percentage is determined by the useful life of the property.³⁸ The new jobs percentage is based on the number of new jobs created in the State directly attributable to the taxpayer's expansion.³⁹ The applicable percentage is determined by the number of new jobs.⁴⁰ The applicable percentage is then multiplied by the amount determined to be the qualified investment to give the amount of the tax credit.⁴¹

The super tax credit may be applied against the major business taxes imposed by the State, the business and occupation tax,⁴² the carrier income tax,⁴³ and the corporate net income tax.⁴⁴ It may also be applied against personal income taxes (for S corporations, partnerships, or sole proprietorships),⁴⁵ unemployment taxes,⁴⁶ and up to twenty percent of workers' compensation premiums.⁴⁷ Additionally, Senate Bill No. 198 allows application of the credit against the new taxes enacted by the Committee Substitute for House Bill No. 1693 when they become effective on July 1, 1987. The super tax credit may be applied against the severance tax,⁴⁸ the telecommunications tax,⁴⁹ and the business franchise tax.⁵⁰

³⁵ W. VA. CODE § 11-13C-4(b) (Supp. 1985).

³⁶ *Id.*

³⁷ W. VA. CODE § 11-13C-6(a) (Supp. 1985).

³⁸ W. VA. CODE § 11-13C-6(b) (Supp. 1985) provides:

If useful life is:	The applicable percentage is:
4 yrs. or more but less than 6 yrs.....	33-1/3%
6 yrs. or more but less than 8 yrs.....	66-2/3%
8 yrs. or more	100%

³⁹ W. VA. CODE § 11-13C-7(a) (Supp. 1985).

⁴⁰ W. VA. CODE § 11-13C-7(b) (Supp. 1985) provides:

If the number of new jobs is:	The applicable percentage is:
1,000	90%
760	80%
520	70%
280	60%
50	50%

⁴¹ W. VA. CODE § 11-13C-4(b) (Supp. 1985).

⁴² W. VA. CODE § 11-13C-5(c) (Supp. 1985).

⁴³ W. VA. CODE § 11-13C-5(d) (Supp. 1985).

⁴⁴ W. VA. CODE § 11-13C-5(h) (Supp. 1985).

⁴⁵ W. VA. CODE § 11-13C-5(i) (Supp. 1985).

⁴⁶ W. VA. CODE § 11-13C-5(k) (Supp. 1985).

⁴⁷ W. VA. CODE § 11-13C-5(l) (Supp. 1985).

⁴⁸ W. VA. CODE § 11-13C-5(e) (Supp. 1985).

⁴⁹ W. VA. CODE § 11-13C-5(f) (Supp. 1985).

⁵⁰ W. VA. CODE § 11-13C-5(g) (Supp. 1985).

The credit may be used to reduce up to eighty percent of any of the taxes but only up to twenty percent of the workers' compensation premiums.⁵¹ The super credit must be applied over a ten year period, at the rate of one-tenth of the total credit per year.⁵² The credit will be applied beginning with the first year that the taxpayer places the qualified investment in service or in use in the State.⁵³

The super tax credit is designed to encourage investment and increase employment in West Virginia.⁵⁴ The credit given to employers for creating new jobs is substantial and could well have a positive effect on investment in the State.

E. Conclusion

The changes in West Virginia's business tax laws enacted by the West Virginia Legislature in 1985 are designed to create a more favorable economic climate for businesses. The elimination of the B&O tax will be beneficial to most West Virginia businesses. However, there are competing interests involved. The State would like to make itself more attractive to potential investors and be more competitive with surrounding states, but it cannot afford to lose tax revenues. Hence, the State retained taxes based on gross revenues whenever it was practicable (i.e., the retention of the B&O tax on utilities and the imposition of the severance and telecommunications taxes). The ideal scenario would be one in which the reduction of tax rates and the eventual elimination of the taxes based on gross proceeds would stimulate investment in the State, creating more taxpayers so the State could make up the lost revenue. It remains to be seen if this will be the case in West Virginia. In the meantime, by retaining gross proceeds-based taxes for some of the State's major corporate taxpayers and by implementing the business franchise tax, the Legislature has insured that the State will continue to have nearly the same level of business tax revenues.

II. INHERITANCE TAXES

A. Background

The West Virginia Legislature also repealed the State's inheritance taxes and enacted an estate pick-up tax. This legislation was in response to Governor Arch Moore's call for the elimination of West Virginia's inheritance taxes in his State of the State Address.

Under the former inheritance tax system, a tax was imposed on the transfer of any property or interest therein from the decedent to another party. The tax

⁵¹ W. VA. CODE § 11-13C-5 (Supp. 1985).

⁵² W. VA. CODE § 11-13C-4 (Supp. 1985).

⁵³ *Id.*

⁵⁴ W. VA. CODE § 11-13C-2 (Supp. 1985).

applied to all transfers taking place by will; through the laws of the State regulating descent and distribution of property; by a gift, deed, grant, or sale made in contemplation of death; or through a taking under a right of survivorship.⁵⁵

The rate of the repealed inheritance tax varied depending on the relationship of the taking survivor to the decedent and on the market value of the property.⁵⁶ When the property was transferred to the wife, husband, child, or stepchild, the rate was three percent of market value.⁵⁷ A transfer to a brother or sister was taxed at four percent.⁵⁸ When the survivor was a relative further removed in relationship from the decedent than brother or sister the rate increased to seven percent of the market value.⁵⁹ A transfer of property to a nonrelative was taxed at ten percent.⁶⁰ When the market value of the property was greater than \$50,000, the rate of the tax was increased.⁶¹

Transfers to the State or to any county, school, or municipal corporation for public purposes were exempted from the tax under the old law.⁶² Transfers made solely for education, literary, scientific, religious, or charitable purposes were also exempt from the tax.⁶³

B. *West Virginia Estate Tax Act*

The Committee Substitute for Senate Bill No. 73 repealed all of Article 11 of Chapter 11 and added a new Article 11.⁶⁴ The repeal of former Article 11 abolished inheritance and transfer taxes for all persons dying after June 30, 1985. The new Article 11 established the "West Virginia Estate Tax Act," which replaced the inheritance taxes.

The new tax is imposed "whenever a federal estate tax is payable to the United States."⁶⁵ The amount of the tax is equal to the maximum amount of federal credit for state death taxes.⁶⁶

The United States Congress imposes a federal estate tax on the taxable estate of every decedent who is a resident of the United States.⁶⁷ However, because of

⁵⁵ W. VA. CODE § 11-11-1 (1983).

⁵⁶ W. VA. CODE § 11-11-2 (1983).

⁵⁷ W. VA. CODE § 11-11-2(a) (1983).

⁵⁸ W. VA. CODE § 11-11-2(b) (1983).

⁵⁹ W. VA. CODE § 11-11-2(c) (1983).

⁶⁰ W. VA. CODE § 11-11-2(d) (1983).

⁶¹ W. VA. CODE § 11-11-3 (1983).

⁶² W. VA. CODE § 11-11-4 (1983).

⁶³ *Id.*

⁶⁴ W. VA. CODE §§ 11-11-1 to -42 (Supp. 1985).

⁶⁵ W. VA. CODE § 11-11-3 (Supp. 1985).

⁶⁶ *Id.*

⁶⁷ 26 U.S.C. § 2001 (1985) (Title 26 of the United States Code is hereinafter referred to as "I.R.C.>").

credits allowed against federal estate taxes under the Internal Revenue Code, estate taxes are rarely payable to the United States. The Internal Revenue Code allows a unified credit to every estate against the federal estate tax.⁶⁸ The amount of the unified credit for decedents dying in 1985 is \$121,800. For those dying in 1986 the credit is \$155,800; for those dying in 1987 and the years thereafter the credit is \$192,800.⁶⁹

Using the rates for the federal estate tax in Section 2001, in 1985 the taxable estate would have to be worth more than \$400,000 before the tax would be greater than the unified credit of \$121,800.⁷⁰ In 1986 the figure for the taxable estate increases to \$500,000 before the tax is equal to the unified credit.⁷¹ For 1987 and the years thereafter, an estate will have to be worth more than \$600,000 before an estate tax is payable to the federal government.⁷²

West Virginia's estate tax is imposed whenever a federal tax is "payable." Because of the unified credit, no taxes are payable to the federal government when the estate is worth less than \$400,000. Since most West Virginia estates are worth considerably less than \$400,000, most estates will be exempt from both federal and state estate taxes.

The estate tax is equal to the maximum allowable amount of federal credit for state taxes.⁷³ The Internal Revenue Code says that federal estate taxes "should be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any state. . . ."⁷⁴ The purpose of I.R.C. section 2011 is to reduce multiple taxation of estates which are subject to both federal and state death taxes. Since West Virginia's estate tax is equal to the maximum amount of credit allowable, it will not result in additional taxes being paid when the tax is imposed. The taxes which would have been payable to the federal government will be paid to the State instead, and this payment will be credited against the federal taxes.⁷⁵ The maximum amount of federal credit allowable for state death taxes varies with the worth of the taxable estate. The Internal Revenue Code sets out the maximum credit for estates of different values.⁷⁶

The revenue generated under the pick-up tax will be substantially lower than revenue generated by the repealed inheritance tax. It has been estimated that if the pick-up tax were implemented on January 1, 1985, and it was the only death tax in effect, revenue from State death taxes would drop by eighty-eight percent.

⁶⁸ I.R.C. § 2010(a) (1985).

⁶⁹ I.R.C. § 2010(b) (1985).

⁷⁰ I.R.C. § 2001(c) (1985).

⁷¹ *Id.*

⁷² *Id.*

⁷³ W. VA. CODE § 11-11-3 (Supp. 1985).

⁷⁴ I.R.C. § 2011(a) (1985).

⁷⁵ W. VA. CODE § 11-11-3 (Supp. 1985).

⁷⁶ I.R.C. § 2011 (1985).

Further estimates are that the drop in revenue would be ninety-one percent by 1986.⁷⁷ For this reason, elimination of the inheritance tax and its replacement with only an estate pick-up tax is somewhat surprising.

C. Conclusion

The Committee Substitute for Senate Bill No. 73 has the practical effect of eliminating estate taxes for most West Virginia residents. The repeal of the inheritance tax and its replacement with an estate pick-up tax based on provisions of the Internal Revenue Code will provide a tax break for all estates. Since the State tax is based on the maximum amount of federal credit, even those estates which are subject to the State tax will not have to pay additional taxes. The new law will save State taxpayers money and will relieve most estates of the burden of transfer taxes.

Mark A. Stach

⁷⁷ West Virginia Tax Study Commission, A Tax Study for West Virginia in the 1980s, Final Report to the West Virginia Legislature, 108 (March 1984).